

To: Sivak, Michael[Sivak.Michael@epa.gov]; Weissbard, Ron[RWeissbard@dep.nyc.gov]
Cc: 'Amron, Susan'[samron@law.nyc.gov]; Mehran, Reyhan (NOAA)[Reyhan.Mehran@noaa.gov]; 'ian.beilby@dec.ny.gov'[ian.beilby@dec.ny.gov]; Kwan, Caroline[kwan.caroline@epa.gov]; Schmidt, Mark[schmidt.mark@epa.gov]; Vaughn, Stephanie[Vaughn.Stephannie@epa.gov]; Mintzer, Michael[Mintzer.Michael@epa.gov]; 'Leonard, Edward L. '[leonardel@cdmsmith.com]; 'Mayo, Joseph'[MayoJJ@cdmsmith.com]; 'Cooke, Daniel W. '[cookedw@cdmsmith.com]; 'David Bridgers'[David.bridgers@wallerlaw.com]; 'Tom Schadt'[tschadt@anchorqea.com]; 'David Haury'[dhaury@anchorqea.com]; Nace, Charles[Nace.Charles@epa.gov]; 'jjcura@gmail.com'[jjcura@gmail.com]; 'Jerry Cura (jcura@whgrp.com)'[jcura@whgrp.com]; 'Elise Leduc (eleduc@whgrp.com)'[eleduc@whgrp.com]
From: Prabhu, Chitra
Sent: Fri 3/17/2017 6:43:10 PM
Subject: RE: Newtown Creek: BERA Dispute Meeting
[NYCDEP Position on BERA Dispute.pdf](#)

Michael,

Please see the attached memo summarizing the City's position on the BERA dispute. We will be prepared to discuss our position during the meeting on March 21st. Let me know if you have any questions.

Thanks,

Chitra

Chitra Prabhu, P.E.

Senior Environmental Engineer

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From: Sivak, Michael [mailto:Sivak.Michael@epa.gov]
Sent: Friday, March 17, 2017 1:55 PM
To: Weissbard, Ron <RWeissbard@dep.nyc.gov>
Cc: 'Amron, Susan' <samron@law.nyc.gov>; Mehran, Reyhan (NOAA) <Reyhan.Mehran@noaa.gov>; 'ian.beilby@dec.ny.gov' <ian.beilby@dec.ny.gov>; Kwan, Caroline <kwan.caroline@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; Vaughn, Stephanie <Vaughn.Stephanie@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; 'Leonard, Edward L.' <leonardel@cdmsmith.com>; 'Mayo, Joseph' <MayoJJ@cdmsmith.com>; 'Cooke, Daniel W.' <cookedw@cdmsmith.com>; 'David Bridgers' <David.bridgers@wallerlaw.com>; 'Tom Schadt' <tschadt@anchorqea.com>; 'David Haury' <dhaury@anchorqea.com>; Nace, Charles <Nace.Charles@epa.gov>; Prabhu, Chitra <cprabhu@louisberger.com>; 'jjcura@gmail.com' <jjcura@gmail.com>; 'Jerry Cura (jcura@whgrp.com)' <jcura@whgrp.com>; 'Elise Leduc (eleduc@whgrp.com)' <eleduc@whgrp.com>
Subject: RE: Newtown Creek: BERA Dispute Meeting

Ron,

Thanks for agreeing to send out a paper that documents the City's position.

As for Tuesday's meeting, I anticipate this being the final meeting prior to issuing a resolution on the dispute. Therefore, I will need to hear from all parties on the topics that are being discussed. I will send out a revised agenda later today which will include this issue as a topic that requires further discussion. I expect the City and all other parties will be prepared to discuss their position at that time.

Michael Sivak

212.637.4310

From: Weissbard, Ron [<mailto:RWeissbard@dep.nyc.gov>]
Sent: Friday, March 17, 2017 12:54 PM
To: Sivak, Michael <Sivak.Michael@epa.gov>
Cc: 'Amron, Susan' <samron@law.nyc.gov>; Mehran, Reyhan (NOAA) <Reyhan.Mehran@noaa.gov>; 'ian.beilby@dec.ny.gov' <ian.beilby@dec.ny.gov>; Kwan, Caroline <kwan.caroline@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; Vaughn, Stephanie <Vaughn.Stephanie@epa.gov>; Mintzer, Michael <Mintzer.Michael@epa.gov>; 'Leonard, Edward L.' <leonardel@cdmsmith.com>; 'Mayo, Joseph' <MayoJJ@cdmsmith.com>; 'Cooke, Daniel W.' <cookedw@cdmsmith.com>; 'David Bridgers' <David.bridgers@wallerlaw.com>; 'Tom Schadt' <tschadt@anchorage.com>; 'David Haury' <dhaury@anchorage.com>; Nace, Charles <Nace.Charles@epa.gov>; 'Prabhu, Chitra' <cprabhu@louisberger.com>; 'jjcura@gmail.com' <jjcura@gmail.com>; 'Jerry Cura' <jcura@whgrp.com>; 'Elise Leduc' <eleduc@whgrp.com>
Subject: RE: Newtown Creek: BERA Dispute Meeting

Thanks Michael.

The memo will go out by COB. Just to clarify, the purpose of the memo was to put our position on the record and for EPA to refer to in making its decision. The issues in this document have already been voiced or presented during our meetings on the dispute, and out of concern for further delays, our intention was not a discussion document that would warrant responses (and responses to responses etc.). That said, we are happy to discuss on Tuesday.

Ron Weissbard, P.E./Acting Director of Superfund

NYC Environmental Protection/Sustainability

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From: Sivak, Michael [<mailto:Sivak.Michael@epa.gov>]
Sent: Thursday, March 16, 2017 5:16 PM
To: Weissbard, Ron <RWeissbard@dep.nyc.gov>
Cc: 'Amron, Susan' <samron@law.nyc.gov>; Mehran, Reyhan (NOAA)

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Subject: RE: Newtown Creek: BERA Dispute Meeting

Ron: After considering your concerns with EPA's views on this issue, I will add this issue to the agenda for the dispute resolution meeting on March 21. I ask that the City submit their memo to all parties on this email, including the NCG and AQ, by tomorrow COB, to allow adequate time for EPA and AQ to review the City's memo and develop responses that I will hear at the meeting on March 21.

Everyone: I will send out a revised agenda for the meeting on March 21 on Friday. Please be aware that the meeting will now likely extend beyond two hours to allow time for all issues to be thoroughly considered.

Michael Sivak

212.637.4310

From: Weissbard, Ron [mailto:RWeissbard@dep.nyc.gov]
Sent: Thursday, March 16, 2017 2:24 PM
To: Sivak, Michael <Sivak.Michael@epa.gov>
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Subject: RE: Newtown Creek: BERA Dispute Meeting

Michael,

They City has a concern on the issue of Benthic Macroinvertebrates and Confounding Factors, previously disputed by NCG but now considered resolved.

EPA's original direction to NCG was to remove language on confounding factors. The City has previously provided comments that the NCG analysis (based on mineral oils/C19-C36 hydrocarbons) is arbitrary and inaccurate. During the course of the dispute AQ did not provide any additional material on the confounding factors, but changed the basis of removing stations to a (seemingly arbitrary) geographic basis and indicated the final document would provide further explanation along with an evaluation of the relative scientific merits of the different lines of evidence.

Based on the original inadequate analysis provided by AQ/NCG and the numerous experiences throughout the RI/FS process of AQ/NCG re-submitting documents that remain deficient, this issue should not be considered resolved. It might be more expedient if EPA developed specific language or a different process to workshop what the revised document should contain. Otherwise, in 30 or 45 days we will likely be dealing with a deficient document and similar dispute.

The City will be providing a (short) memo on concerns with the AQ/NCG approach, however we wanted to flag this issue in particular since it is now considered resolved and is not included in the list of topics for next week. The City would like to discuss this issue with the EPA next week.

Thanks

Ron Weissbard, P.E./Acting Director of Superfund

NYC Environmental Protection/Sustainability

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From: Sivak, Michael [<mailto:Sivak.Michael@epa.gov>]

Sent: Tuesday, March 14, 2017 3:36 PM

To: Tom Schadt <tschadt@anchoragea.com>; David Bridgers <David.bridgers@wallerlaw.com>

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Caroline <kwan.caroline@epa.gov>; Schmidt, Mark <schmidt.mark@epa.gov>; Vaughn,

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Subject: Newtown Creek: BERA Dispute Meeting

The final planned meeting to discuss the issues under dispute for the Newtown Creek BERA is scheduled for March 21 at 2 PM at 666 Fifth Avenue, 26th Floor, Conference Room D/E, New York City. Based on the recent summary submitted by AQ on March 9, 2017 and a review of the letter from David Bridgers dated December 22, 2016 invoking dispute resolution, there are four technical issues and one administrative issue that remain unresolved and in dispute by the NCG. These issues are:

Technical issues:

- Reference areas
- 10-day Sediment toxicity test results
- Wildlife exposure modifying factors
- Selection of tissue thresholds

Administrative issue:

- Due date for submittal of revised BERA

The meeting is scheduled for two hours. As there has been significant discussion between EPA and AQ on these issues since the initial meeting to discuss the dispute, there is a need for both AQ, on behalf of the NCG, and EPA to present their current positions on these issues. I propose the following agenda, in order to address each of the outstanding issues in the dispute:

- Introduction and summary: M. Sivak (5 minutes)
- Reference areas
 - AQ discussion (10 minutes)
 - EPA discussion (10 minutes)
 - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- 10-day Sediment toxicity test results
 - AQ discussion (10 minutes)
 - EPA discussion (10 minutes)
 - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Wildlife exposure modifying factors
 - AQ discussion (10 minutes)
 - EPA discussion (10 minutes)
 - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Selection of tissue thresholds
 - AQ discussion (10 minutes)
 - EPA discussion (10 minutes)
 - Input from all other stakeholders: NYS DEC, NOAA, FWS, NYC DEP (5 minutes)
- Due date for submittal of revised BERA
 - AQ recommendation and EPA recommendation (5 minutes)
- Summary: M. Sivak (10 minutes)

Finally, with this communication, I am extending the due date of the dispute period until March 28, one week after the meeting.

Michael Sivak

Chief, Passaic, Hackensack and Newark Bay Remediation Branch
EPA Region 2 Superfund Program

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